

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

## Memorandum

**Date:** April 15, 2005

**To:** The Commission  
(Meeting of April 21, 2005)

**From:** Delaney L. Hunter, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 375 (Cogdill) CEQA: telecommunications lines: exemption**  
As Amended March 29, 2005

### **Legislative Subcommittee Recommendation:** Support with amendments

**Summary:** This bill allows exemption from CEQA for among other things, construction on existing telecommunications facilities, extension of telecommunications facilities to serve existing customers, telecommunications facilities within a public right-of-way and actions of the CPUC to approve financing transactions of telecommunications providers.

The bill's intent is to eliminate CEQA review for existing telecommunications facilities and telecommunications financing transactions. The purpose would be to eliminate review on already constructed facilities that have either been reviewed or were constructed prior to the implementation of CEQA.

**Division Recommendation and Supporting Arguments (Telco):** Support with amendments

### **Summary of Suggested Amendments**

- (D) Where local permit requirements ensure potential impacts to noise, traffic and air (dust) are minimized, the construction and location of a telecommunications utility extension in a previously disturbed and/or urban area, including the construction of a **reasonable length** to serve customers from existing facilities, and including a street improvement of **reasonable length** to serve the construction, so long as the construction consists of **limited numbers** of new, **small facilities or structures**, installation of small new equipment and facilities in **small structures**, or the conversion of existing **small**

**structures** from one use to another where only minor modifications are made in the exterior of the structure.

Additional amendments should put tangible parameters on the following terms:

- Reasonable length
- Limited numbers
- Small facilities or structures

~~(E) The construction and location of a telecommunications utility facility, including a street improvement to serve the construction, if the construction is within the public right-of-way or on a publicly owned or maintained right-of-way and where the provision of a telecommunications utility facility has been considered in a prior environmental impact report or initial study. The telecommunications utility facility constructed may be different from that considered in the prior environmental impact report or initial study so long as the difference is negligible or minor in nature.~~

## ANALYSIS

- Elimination of existing facilities from CEQA review provides an institutional bias in favor of telecommunications providers who have already constructed their facilities.
- Institutional bias towards already constructed facilities may retard the construction of newer, more technologically advanced facilities.
- Institutional bias towards already constructed facilities will likely enhance the already-existing cost advantage incumbent telecommunications companies have because they rely on facilities that are, for the most part, already constructed.
- Elimination of CEQA review for under grounding is likely to have a significant impact on the environment because aerial cable does not have the potential impact on the environment that underground facilities does in disturbing the soil and any potential cultural and biological resources that could be destroyed in the process.
- Under grounding of telecommunications distribution facilities are already exempt from CEQA.
- Inclusion of facility extensions in the exemption could provide a significant loophole in CEQA which will work only to the advantage of incumbent telephone companies with existing facilities.
- CEQA is already unequally applied as to the incumbent telephone companies versus new entrants. This legislation will make the inequality greater.
- Eliminating the CEQA review for facilities in public rights of way will eliminate the CPUC's current minimal, but essential, review of licensed utility activities which ensures that CEQA is followed.

- Relying on an initial study as called for in the current subsection E does not produce a final document that can be relied upon for the purposes of CEQA. If the section is not eliminated entirely, the language should at least be amended to say Final Environmental Impact Report, Mitigated Negative Declaration or Negative Declaration.

## LEGISLATIVE HISTORY

### STATUS

The bill was amended in Assembly Natural Resources on March 29, 2005, and was re-referred to Assembly Natural Resources. A hearing date has not been scheduled.

### SUPPORT/OPPOSITION

#### Support:

California Telephone Association (sponsor)

#### Opposition:

None on file.

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**Date:** April 15, 2005

**BILL LANGUAGE:**

BILL NUMBER: AB 375      AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY    MARCH 29, 2005

INTRODUCED BY    Assembly Member Cogdill

FEBRUARY 11, 2005

An act to amend Section 21080 of the Public Resources Code,  
relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 375, as amended, Cogdill. CEQA: telecommunications lines:  
exemption.

Existing law, the California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA exempts from its provisions, among other things, certain types of ministerial projects proposed to be carried out or approved by public agencies, emergency repairs to public service facilities necessary to maintain service, and actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale of purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report.

This bill would additionally exempt from CEQA : (1) actions undertaken by a public agency relating to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of an existing public or private structure, facility, mechanical equipment, or topographical feature, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination and consisting of an existing facility of both investor and publicly owned utilities used to provide telecommunications public utility services, as specified ; (2) replacement or reconstruction of an existing telecommunication utility system or facility involving negligible or no expansion of capacity; (3) conversion of a telecommunication utility overhead distribution system facility to underground, as prescribed; (4) the construction and location of a telecommunications utility extension, as prescribed; (5) construction and location of a telecommunications utility facility, as prescribed .

*The bill would also exempt from CEQA actions taken by the Public Utilities Commission on applications for approval of financing transactions related to the issuance of securities, or the transfer or encumbrance of property, by a telecommunications public utility.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

(b) This division does not apply to any of the following activities:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) (A) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for ~~the purpose of~~ any of the following purposes : ~~-(A) meeting operating expenses, including employee wage rates and fringe benefits; (B) purchasing or leasing supplies, equipment, or materials; (C) meeting financial reserve needs and requirements; (D) obtaining funds for capital projects necessary to maintain service within existing service areas; or (E) obtaining funds necessary to maintain those intracity transfers as~~

~~are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.~~

(i) Meeting operating expenses, including employee wage rates and fringe benefits.

(ii) Purchasing or leasing supplies, equipment, or materials.

(iii) Meeting financial reserve needs and requirements.

(iv) Obtaining funds for capital projects necessary to maintain service within existing service areas.

(v) Obtaining funds necessary to maintain those intracity transfers that are authorized by city charter.

(B) The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed, setting forth with specificity the basis for the claim of exemption.

(9) All classes of projects designated pursuant to Section 21084.

(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(12) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(13) A project for the development of a regional transportation improvement program, the state transportation improvement program, or a congestion management program prepared pursuant to Section 65089 of the Government Code.

(14) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.

(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect on the environment in the plan or other written documentation required by Section 21080.5 is subject to this division.

(16) ~~(i)~~ — (A)

Actions undertaken by a public agency relating to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of an existing public or private structure, facility, mechanical equipment, or topographical feature, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination, and consisting of an existing facility of both investor and publicly owned utilities used to provide telecommunications public utility services.

~~(ii)~~

(B) The replacement or reconstruction of an existing telecommunication utility system or facility involving

negligible or no expansion of capacity.

~~—(iii)—~~

(C) The conversion of a telecommunications utility overhead distribution system facility to underground, including the connection to an existing overhead distribution line where the surface is restored to the condition existing prior to the undergrounding.

~~—(iv)—~~

(D) The construction and location of a telecommunications utility extension, including *the construction of a reasonable length to serve customers from existing facilities, and including a street improvement of reasonable length to serve the construction, so long as the construction consists of limited numbers of new, small facilities or structures, installation of small new equipment and facilities in small structures, or the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.*

~~—(v) The construction and location of a telecommunications utility facility, including a street improvement to serve the construction, if the construction occurs on a publicly owned or maintained right-of-way.—~~

(E) *The construction and location of a telecommunications utility facility, including a street improvement to serve the construction, if the construction is within the public right-of-way or on a publicly owned or maintained right-of-way and where the provision of a telecommunications utility facility has been considered in a prior environmental impact report or initial study. The telecommunications utility facility constructed may be different from that considered in the prior environmental impact report or initial study so long as the difference is negligible or minor in nature.*

~~—(vi) An application to the California Public Utilities Commission for approval of financing transactions pursuant to—~~

(F) *An action by the Public Utilities Commission on an application for approval of financing transactions by a telecommunications public utility pursuant to Article 5 (commencing with Section 816) and Article 6 (commencing with Section 851) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, regardless of the use of the funds raised by the financing transaction.*

(c) If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

(1) There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.

(d) If there is substantial evidence, in light of the whole record

before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) (1) For the purposes of this section and this division, substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.

(2) Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

(f) As a result of the public review process for a mitigated negative declaration, including administrative decisions and public hearings, the lead agency may conclude that certain mitigation measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, prior to approving the project, may delete those mitigation measures and substitute for them other mitigation measures that the lead agency finds, after holding a public hearing on the matter, are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. If those new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures shall not constitute an action or circumstance requiring recirculation of the mitigated negative declaration.

(g) Nothing in this section shall preclude a project applicant or any other person from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

\_\_\_\_\_ CORRECTIONS

Corrections Line- Page 1.

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